

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Manner of Communications Assistance
for Law Enforcement Act and Broadband and
Access Services

ET Docket No. 04-295

RM 10865

**COMMENTS OF VERIZON ON THE COMMISSION'S
FURTHER NOTICE OF PROPOSED RULEMAKING**

As Verizon^{1/} has already explained, it recognizes the importance of the Communications Assistance for Law Enforcement Act ("CALEA") and is committed to meeting its obligations under that statute. And Verizon generally supports the conclusions reached by the Commission in its *First Report and Order*.^{2/} Nevertheless, as explained below, the Commission should do more to recognize the essential function of the industry standards-setting bodies in guiding providers' efforts to develop CALEA-compliant solutions. Second, whatever action the Commission takes in response to the *FNPRM*, the Commission should not shift any CALEA obligations from other providers to broadband access providers that might be involved in carrying such entities' traffic. Finally, providers who seek to be excused from some or all CALEA obligations can petition the Commission

^{1/} The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

^{2/} *Communications Assistance for Law Enforcement Act and Broadband and Access Services*, 20 FCC Rcd 14989 (2005) ("*Order*" or "*FNPRM*").

under section 109; therefore, there is no need to exempt or develop relaxed standards for classes of providers.

I. An Update on the Development of Industry Standards

As an initial matter, the Commission should acknowledge the critical role that industry standards play in carriers' ongoing efforts to develop CALEA-compliant solutions for their services. The FCC should not take any steps that interfere with or complicate the work that industry standards bodies are currently doing.

Verizon continues to work with law enforcement and industry on developing standards applicable to VoIP and broadband access services, and those efforts have resulted in considerable progress. In deciding questions raised in the *FNPRM*, the Commission should recognize that there is significant uncertainty concerning how to implement CALEA's capabilities and that much work remains to be done both in terms of defining the technical requirements and then developing and deploying the requisite hardware and software.

With respect to VoIP, for the past year, a subcommittee of the Alliance for Telecommunications Industry Solutions, an industry standards-setting body, has been working on version 2 of the T1.678 Standard, "Lawfully Authorized Electronic Surveillance (LAES) for Voice over Packet Technologies in Wireline Telecommunications." That standard defines the technical requirements and interface between a telecommunications provider and law enforcement to assist law enforcement in conducting electronic surveillance of VoIP communications. Specifically, it defines the content of the messages that will be transmitted to law enforcement, the format of those

messages, and the configuration of the physical connection between carriers and law enforcement. The initial version of the T1.678 standard addressed basic surveillance of VoIP services that use the most common messaging and call control protocols such as the Session Initiation Protocol (“SIP”). The standards committee undertook to develop version 2 of this standard in order to define the requirements for so-called multi-call events, such as hold/retrieve, multi-party conference calls, and call transfer. These requirements would extend the basic VoIP requirements for surveillance (developed under version 1) to cover a wider and more complex range of supplementary applications, including services that rely on the re-directing of calls. A draft of this version of the standard was forwarded to the industry for a letter ballot vote in October 2005. Law enforcement expressed some concerns about the draft standard. Industry and law enforcement will continue to explore potential changes to the draft standard in order to seek resolution of any concerns.

Work is also in progress on the standard for wireline broadband access services, the IP Network Access (“IPNA”) standard, which focuses on the portion of the network that facilitates subscriber access to the public IP network, including xDSL, cable, and Wi-Fi. Development of this standard is a significant undertaking and is made all the more so by continuing uncertainty concerning fundamental questions, such as what constitutes “call-identifying information” in the context of broadband access and the form and manner in which carriers should deliver information to law enforcement. The resolution of some of these issues depends in part on the content of the Commission’s upcoming second order in this proceeding in which it will address some of the outstanding questions from its *NPRM*. See *Order* ¶ 46. Ultimately, the general framework for IPNA lawful intercept capabilities

will need to encompass what information needs to be provided to law enforcement and what collection and delivery formats are applicable to broadband services. While there remains significant work to be done, the standards body is currently aiming to complete the IPNA standard in 2006.

Even after any concerns about version 2 of the VoIP standard are resolved and the IPNA standard is completed, the implementation of these standards into carriers' network designs and the adoption of new capabilities into available hardware and software products from vendors will remain a formidable challenge. From a practical standpoint, service providers cannot deploy a collection of customized or technology-by-technology solutions, but will need to pursue a comprehensive network solution that addresses all CALEA-applicable standards and services. Likewise, vendors of network hardware will need to adopt stable industry standards into their product designs, as well as work with other suppliers in the industry that offer information collection and mediation solutions. *See* Verizon Comments, ET Docket No. 04-295 at 17-18 (filed Nov. 8, 2004); Verizon Reply Comments, ET Docket No. 04-295 at 15-16 (filed Dec. 21, 2004). Many of these capabilities are outside the direct scope of the standards and will require cooperation between multiple vendors and each service provider. As a result, the adoption of industry standards is the first step in the implementation and deployment of CALEA capabilities. The Commission should bear in mind the considerable work that remains to be done to implement CALEA capabilities for even the most basic packet-based services as it considers the questions raised in the *FNPRM*, as well as the issues that remain from its initial *NPRM*.

II. Responsibility of Broadband Access Providers

Whether or not the Commission extends CALEA to encompass non-interconnected VoIP providers, exempts entire classes of carriers, or permits varying levels of compliance for particular entities, the Commission should not shift any CALEA obligations that might have applied to such carriers to broadband access providers that might be involved in carrying such entities' traffic.

Where VoIP and other applications are provided over DSL broadband access service, the broadband access provider will switch and forward data based on information at layers one (physical), two (data-link), or three (network) of the protocol stack, but will not normally process or interpret higher layers, including the session through application layers. The broadband access provider might be able to provide the customer's entire packet stream if law enforcement has the requisite court order, but it will often be unaware of what type of communication and information (including voice) is transmitted using its access service. Thus, in the context of VoIP, the broadband access provider may not even be able to tell whether voice traffic is flowing over its network. As the Commission properly recognized in its *Order*, "broadband Internet access providers alone might not have reasonable access" to data such as "call management information" and "call set-up information." *Order* ¶ 44.

In the context of universities and "hot spots," a broadband access provider may provide a "pipe" that connects the university or hot spot to the public Internet. The Commission determined that, to the extent otherwise private networks, such as universities or hot spots, "are interconnected with a public network" such as the Internet, "providers of the facilities that support the connection of the private network to the public network are subject to CALEA" under the substantial replacement prong. *Order* ¶ 36 n.100. But the provider of that pipe may have limited ability to provide relevant information to law

enforcement. For example, a provider of broadband access to a university that has its own private network may not be able to isolate the traffic attributable to a particular student or other user. Indeed, depending on the technical configuration, the access provider might be able to do little more than provide all the traffic between the university network and the public Internet.

Accordingly, the fact that a particular VoIP provider, educational institution, or other entity may not be subject to CALEA should not result in the broadband access provider carrying any of that entity's traffic to have any additional CALEA obligations. This approach is consistent with Congress' intent that CALEA is "not intended to guarantee 'one-stop shopping' for law enforcement." See H.R. Rep. No. 103-827, *reprinted in* 1994 U.S.C.C.A.N. 3489, 3502 (1994). Indeed, even the DOJ recognized in its comments on the Commission's first *NPRM* that a "conclusion that broadband Internet access providers are telecommunications carriers subject to CALEA does not necessarily mean that they are responsible for extracting all of the call-identifying information available within the subject's packet stream, particularly if it pertains, for example, to VoIP services that the carrier does not provide but that its subscribers may use." Comments of DOJ, ET Docket No. 04-295 at 7-8 (filed Nov. 8, 2004). In such situations, Congress has made clear that the broadband access provider should be required to do no more than provide data carried in a digital form to law enforcement in that form, as well as to extract "reasonably available" call-identifying information, while it is law enforcement's responsibility to determine if that communication is "voice, fax, or data and [to] translat[e] it into usable form." House Report at 3502. Of course, law enforcement can still turn to the non-interconnected VoIP provider, university, "hot spot," or other entity for assistance, since

they all still would have the obligation to comply with the Electronic Communications Privacy Act, the Wiretap Act, and other electronic surveillance statutes even if they were partially or fully exempt from CALEA.

III. Exempting Classes of Carriers and Providers from CALEA

The Commission should not exempt entire classes of providers, such as small and rural carriers and educational institutions, from CALEA or develop a set of relaxed standards for certain providers because the statute already contains provisions that permit the Commission to determine that compliance with CALEA is not “reasonably achievable.” *Order ¶¶ 49-52*. Flat exemptions and relaxed standards do not serve the public interest because they would encourage terrorists and other criminals to migrate to particular types of carriers that are insulated from CALEA.

To the extent that any provider seeks an exemption from CALEA, section 109 of CALEA gives the Commission the power to determine whether compliance with the assistance capability requirements is “reasonably achievable with respect to any equipment, facility, or service installed or deployed after January 1, 1995.” 47 U.S.C. § 1008(b)(1). Section 109 sets forth an extensive list of factors for the Commission to consider in making that determination, including the effect on public safety and national security, the need to achieve compliance through cost-effective methods, the cost of the equipment, facility, or service at issue, the policy of encouraging provision of new technologies to the public, and the financial resources of the carrier.

CONCLUSION

For the foregoing reasons, the Commission should not interfere with or impede the important function of the industry standards-setting bodies in guiding providers’ efforts to develop CALEA-compliant solutions. Second, in considering the issues raised in the

FNPRM, the Commission should not shift any CALEA obligations from other providers to broadband access providers that might be involved in carrying such entities' traffic.

Finally, under section 109, providers may petition the Commission for a determination that CALEA compliance is not "reasonably achievable," and, as a result, there is no need to exempt or develop relaxed standards for classes of providers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen Swift', written over a horizontal line.

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THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are following entities affiliated with Verizon Communications Inc. The local exchange carriers participating in this filing are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Southwest Incorporated d/b/a Verizon Southwest
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.

The Verizon long distance companies participating in this filing are:

Bell Atlantic Communications, Inc. d/b/a Verizon Long Distance
NYNEX Long Distance Company d/b/a Verizon Enterprise Solutions
Verizon Select Services Inc.
Verizon Global Networks Inc.

The Verizon Avenue Corp. companies participating in this filing are:

OnePoint Communications–Colorado, L.L.C. d/b/a Verizon Avenue
OnePoint Communications–Georgia, L.L.C. d/b/a Verizon Avenue
OnePoint Communications–Illinois, L.L.C. d/b/a Verizon Avenue
VIC-RMTS-DC, L.L.C. d/b/a Verizon Avenue